

# **EXHIBIT “M”**

AGREEMENT

between

F.J. SCIAME CONSTRUCTION CO., INC. ("Contractor")

and

WHITESTONE CONSTRUCTION CORP. ("Subcontractor")

Dated: October 7, 2013

Received

OCT 08 2013

By:  
Whitestone Construction Corp.

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Whitestone Construction Corp.



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By:  
Whitestone Construction Corp.



# AIA® Document A401™ – 2007

## **Standard Form of Agreement Between Contractor and Subcontractor**

SUBCONTRACTOR'S ATTENTION IS CALLED TO THE RIDERS TO THIS AGREEMENT. THESE RIDERS FORM AN INTEGRAL PART OF THE AGREEMENT AND BY EXECUTING THE SUBCONTRACT, THE SUBCONTRACTOR SHALL BE BOUND BY ALL TERMS AND CONDITIONS SET FORTH IN THESE RIDERS AND ALL OTHER DOCUMENTS INCORPORATED BY REFERENCE HEREIN

AGREEMENT made as of the 7<sup>th</sup> day of October in the year 2013

BETWEEN the Contractor:

F.J. SCIAME CONSTRUCTION CO., INC.  
14 Wall Street – 2<sup>nd</sup> Floor  
New York, New York 10005

and the Subcontractor:

WHITESTONE CONSTRUCTION CORP  
50-52 49 Street  
Woodside, NY 11377

The Contractor has made a contract for construction (hereinafter, the Prime Contract) dated:

with the Owner:

CITY UNIVERSITY CONSTRUCTION FUND  
555 West 57<sup>th</sup> Street  
New York, New York 10019

for the following Project:

NEW YORK CITY COLLEGE OF TECHNOLOGY – NEW ACADEMIC BUILDING  
285 Jay Street  
Brooklyn, NY 11201

The Prime Contract provides for the furnishing of labor, materials, equipment and services in connection with the construction of the Project. A copy of the Prime Contract, consisting of the Agreement Between Owner and Contractor (from which compensation amounts may be deleted) and the other Contract Documents enumerated therein, has been made available to the Subcontractor.

The Architect for the Project:

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference.

This document has been approved and endorsed by the Associated Specialty Contractors, Inc.

PERKINS EASTMAN  
115 Fifth Avenue  
New York, New York 10003

The Contractor and the Subcontractor agree as follows.

Intt.

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ARTICLE 1 THE SUBCONTRACT DOCUMENTS

§ 1.1 The Subcontract Documents consist of (1) this Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other Contract Documents enumerated therein; (3) Modifications issued subsequent to the execution of the Agreement between the Owner and Contractor, whether before or after the execution of this Agreement; (4) other documents listed in Article 16 of this Agreement; and (5) Modifications to this Subcontract issued after execution of this Agreement. These form the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein. The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Subcontract Documents, other than Modifications issued subsequent to the execution of this Agreement, appears in Article 16.

§ 1.2 The Subcontract may be amended or modified only by a Modification. The Subcontract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and the Subcontractor, (2) between the Owner and the Subcontractor, or (3) between any persons or entities other than the Contractor and Subcontractor.

§ 1.3 Contractor shall make available the Subcontract Documents to the Subcontractor prior to execution of this Agreement, and thereafter, upon request, but the Contractor may charge the Subcontractor for the reasonable cost of reproduction.

Init.



(Paragraph deleted)

## ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

### § 2.1 OBLIGATIONS AND RIGHTS UNDER PRIME CONTRACT.

§ 2.1.1 Subcontractor expressly assumes to Contractor all of the obligations and responsibilities for the performance of this Subcontract as the Contractor assumes toward the Owner respecting performance of the Prime Contract (all documents that comprise the Owner-Contractor Agreement). Subcontractor agrees that Contractor shall have, together with all other rights it may have under other terms of this Subcontract or otherwise, and to the fullest extent permitted by law, all rights and remedies against Subcontractor respecting the performance of this Subcontract that the Owner has against Contractor respecting the performance of the Prime Contract. This includes, without limitation, any exculpatory and indemnity provisions; any duty, including any absolute duty, to protect the Work; any exclusions or limitations upon Claims for damages for delay; any limitations of time, notice requirements, procedures or conditions precedent respecting Claims or requests of any kind; suspension of work; termination of the Contract; any requirements for documentation, substantiation, or certification of Claims or requests of any kind; any warranties or guarantees including specific guarantee retainage provisions; and any dispute resolution provisions, including forum, jurisdiction and venue provisions. Any time provisions imposed upon the Contractor under the Prime Contract or by law shall be binding upon the Subcontractor. Subcontractor must in each case provide Contractor with notice in time to allow the Contractor reasonable opportunity to evaluate and timely act upon any Claim or position asserted by Subcontractor. Subcontractor represents that it is fully familiar with the terms and conditions of the Prime Contract concerning all of the foregoing. The Subcontract, the Prime Contract and the other Contract Documents are intended to supplement and complement each other and shall, where possible, be thus interpreted. If, however, any provision of the Subcontract conflicts with a provision of the Prime Contract or any of the other Contract Documents, the provision imposing the more stringent or restrictive responsibility, obligation or limitation on Subcontractor shall govern.

§ 2.1.2 The Prime Contract and all documents incorporated by reference therein shall continue to be a Contract Document and, as such, is incorporated herein and made a part hereof, and Subcontractor shall continue to be bound by the Prime Contract, notwithstanding any termination, expiration or cancellation of the Prime Contract, or the assignment or reassignment of the Prime Contract by Construction Manager or Owner. The intent of the Contract Documents is to include all items necessary for the proper and timely execution and completion of the Work. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by Subcontractor shall be required if and to the extent consistent with the Contract Documents and inferable from them as being necessary to produce the intended results. In the event of any conflict or discrepancy between or among different versions of the same Contract Document, the most recently issued version takes precedence over previous versions. In the event of any conflict or discrepancy between provisions in separate Contract Documents, the provision imposing the more stringent or restrictive responsibility, obligation or limitation on Subcontractor shall govern. If the conflict or discrepancy between or among separate Contract Documents pertains to (i) quantity, then the Contract Document requiring the greater quantity shall be deemed to be more stringent, (ii) quality, then the Contract Document requiring the better quality shall be deemed to be more stringent, or (iii) cost, then the Contract Document requiring the greater cost shall be deemed to be more stringent.

§ 2.1.3 The Specifications and the Drawings shall be equal in authority and priority; provided, however, that in the event of conflict, (i) the Drawings shall govern as to the quantity and location, and (ii) the Specifications shall govern as to quality and performance.

§ 2.1.4 For all purposes, the terms "Contractor" and "Construction Manager" shall be interchangeable and at all times shall refer to F.J. Sciamie Construction Co., Inc. For all purposes of each Rider to this Agreement, the term "Subcontractor" shall refer to the Subcontractor identified on page 1 of this Agreement.

## ARTICLE 3 CONTRACTOR

### § 3.1 SERVICES PROVIDED BY THE CONTRACTOR

§ 3.1.1 The Contractor shall cooperate with the Subcontractor in scheduling and performing the Contractor's Work to avoid conflicts or interference in the Subcontractor's Work and shall expedite written responses to submittals made by the Subcontractor in accordance with Section 4.1 and Article 5. Promptly after execution of this Agreement, the Contractor shall provide the Subcontractor copies of the Contractor's construction schedule and schedule of submittals, together with such additional scheduling details as will enable the Subcontractor to plan and perform the Subcontractor's Work properly. The Contractor shall promptly notify the Subcontractor of subsequent changes in the construction and submittal schedules and additional scheduling details.



§ 3.1.2 The Contractor shall provide suitable areas for storage of the Subcontractor's materials and equipment during the course of the Work as described in the Specifications and Bid Booklet.

§ 3.1.3 Except as provided in Article 14, the Contractor's equipment will be available to the Subcontractor only at the Contractor's discretion and on mutually satisfactory terms.

### § 3.2 COMMUNICATIONS

§ 3.2.1 The Contractor shall promptly make available to the Subcontractor information, including information received from the Owner, that affects this Subcontract and that becomes available to the Contractor subsequent to execution of this Subcontract.

§ 3.2.2 [Intentionally Omitted]

§ 3.2.3 [Intentionally Omitted]

§ 3.2.4 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Contractor, a subcontractor or anyone directly or indirectly employed by them (other than the Subcontractor), the Contractor shall, prior to harmful exposure of the Subcontractor's employees to such substance, give written notice of the chemical composition thereof to the Subcontractor in sufficient detail and time to permit the Subcontractor's compliance with such laws.

§ 3.2.5 The Contractor shall furnish to the Subcontractor within 30 days after receipt of a written request, or earlier if so required by law, information necessary and relevant for the Subcontractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property, usually referred to as the site, on which the Project is located and the Owner's interest therein.

§ 3.2.6 If the Contractor asserts or defends a claim against the Owner that relates to the Work of the Subcontractor, the Contractor shall promptly make available to the Subcontractor all information relating to the portion of the claim that relates to the Work of the Subcontractor.

### § 3.3 CLAIMS BY THE CONTRACTOR

§ 3.3.1 Liquidated damages for delay, as described in Section 9.3 of this Agreement, shall be assessed against the Subcontractor only to the extent caused by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable, and in no case for delays or causes arising outside the scope of this Subcontract.

§ 3.3.2 The Contractor's claims for the costs of services or materials provided due to the Subcontractor's failure to execute the Work shall require

- .1 seven days' written notice prior to the Contractor's providing services or materials, except in an emergency; and
- .2 written compilations to the Subcontractor of services and materials provided by the Contractor and charges for such services and materials no later than the fifteenth day of the month following the Contractor's providing such services or materials.

### § 3.4 CONTRACTOR'S REMEDIES

#### § 3.4.1 SUBCONTRACTORS FAILURE TO PERFORM WORK

If the Subcontractor defaults under or fails to carry out the Work in accordance with, the Contract Documents and fails within a five (5) day period after receipt of written notice from Contractor to commence and continue correction of such default or failure with diligence and promptness, the Contractor may, without prejudice to any other remedies the Contractor may have, carry out the Work or otherwise cure the default. In such case an appropriate Construction Change Directive or Change Order shall be issued deducting from payments then or thereafter due the Subcontractor all costs incurred by the Contractor in carrying out the Work or curing the default. If payments then or thereafter due the Subcontractor are not sufficient to cover such amounts, the Subcontractor shall pay upon demand the difference to Contractor. The right of the Contractor to stop the Work pursuant to this §3.4.1 shall not give rise to any duty on the part of the Contractor to exercise this right for the benefit of the Subcontractor or any other person or entity, nor are the rights enumerated in this §3.4.1 the exclusive remedies available to Contractor.



#### ARTICLE 4 SUBCONTRACTOR

##### § 4.1 EXECUTION AND PROGRESS OF THE WORK

§ 4.1.1 For all Work the Subcontractor intends to subcontract, the Subcontractor shall enter into written agreements with Sub-subcontractors performing portions of the Work of this Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities that the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other that the Contractor and Subcontractor have by virtue of the provisions of this Agreement.

§ 4.1.2 The Subcontractor shall supervise and direct the Subcontractor's Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in or interference with the Work of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.1.3 The Subcontractor shall submit Shop Drawings, Product Data, Samples and similar submittals required by the Subcontract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors.

§ 4.1.4 The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of this Subcontract as mutually agreed, including information on the status of materials and equipment that may be in the course of preparation, manufacture, or transit.

§ 4.1.5 The Subcontractor agrees that the Contractor and the Architect each have the authority to reject Work of the Subcontractor that does not conform to the Prime Contract. The Architect's decisions on matters relating to aesthetic effect shall be final and binding on the Subcontractor if consistent with the intent expressed in the Prime Contract.

§ 4.1.6 The Subcontractor shall pay for all materials, equipment and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

§ 4.1.7 The Subcontractor shall take necessary precautions to protect properly the work of other subcontractors from damage caused by operations under this Subcontract.

§ 4.1.8 The Subcontractor shall cooperate with the Contractor, other subcontractors, the Owner, and separate contractors whose work might interfere with the Subcontractor's Work. The Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion, if required by the Prime Contract, specifically noting and advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors, the Owner, or separate contractors.

##### § 4.2 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 4.2.1 The Subcontractor shall give notices and comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on performance of the Work of this Subcontract. The Subcontractor shall secure and pay for permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract.

§ 4.2.2 The Subcontractor shall comply with Federal, state and local tax laws, social security acts, unemployment compensation acts and workers' compensation acts insofar as applicable to the performance of this Subcontract.

##### § 4.3 SAFETY PRECAUTIONS AND PROCEDURES

§ 4.3.1 The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract, shall comply with safety measures initiated by the Contractor and with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities for the safety of persons and property in accordance with the requirements of the Prime Contract. The Subcontractor shall report to the Contractor within three days an injury to an employee or agent of the Subcontractor which occurred at the site.

§ 4.3.2 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractor's Sub-subcontractors or anyone directly or indirectly



employed by them, the Subcontractor shall, prior to harmful exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and other employers on the site.

§ 4.3.3 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and promptly report the condition to the Contractor in writing. When the material or substance has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon written agreement of the Contractor and Subcontractor. The Subcontract Time shall be extended appropriately and the Subcontract Sum shall be increased in the amount of the Subcontractor's reasonable additional costs of demobilization, delay and remobilization, which adjustments shall be accomplished as provided in Article 5 of this Agreement.

§ 4.3.4 The Subcontractor shall indemnify the Contractor for the cost and expense the Contractor incurs (1) for remediation of a material or substance brought to the site and negligently handled by the Subcontractor or (2) where the Subcontractor fails to perform its obligations under Section 4.3.3, except to the extent that the cost and expense are due to the Contractor's fault or negligence.

(Paragraph deleted)

#### § 4.4 CLEANING UP

§ 4.4.1 Subcontractor shall maintain at all times, a clean, safe work site so as not to present hazards and safety concerns. Subcontractor is responsible for maintaining its work areas such that they are clean, orderly and free from hazards and debris. Contractor may upon 24 hours notice clean up Subcontractor's work site(s) and charge the direct and indirect costs thereof to Subcontractor or in the event it is difficult to determine whose debris, etc., is being removed, Contractor shall make a reasonable allocation of the direct and indirect costs among the applicable subcontractors and charge the Subcontractor its reasonable share. Upon completion of the Work, Subcontractor shall remove all its tools, materials, rubbish, debris and other articles from the work site and shall leave its portion of the Work and the area occupied or used by it broom clean. Should it fail to take prompt action to this end, the Owner or Contractor (at its option and without waiver of such other rights as it may have) may on ten (10) days' notice treat them as abandoned property and shall charge Subcontractor the costs for removal of Subcontractor's tools, materials, rubbish, debris and other articles of property.

§ 4.4.2 As provided under Section 3.3.2, if the Subcontractor fails to clean up as provided in the Subcontract Documents, the Contractor may charge the Subcontractor for the Subcontractor's appropriate share of cleanup costs.

#### § 4.5 WARRANTY

The Subcontractor warrants to the Owner, Architect, and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless the Subcontract Documents require or permit otherwise. The Subcontractor further warrants that the Work will conform to the requirements of the Subcontract Documents and will be free from defects, except for those inherent in the quality of the Work the Subcontract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect and Contractor, the Subcontractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

#### § 4.6 INDEMNIFICATION

§ 4.6.1 (a) The Subcontractor shall be solely responsible for any and all injuries to persons (including, without limitation, death) and all damage to property (including loss of use thereof) resulting from or arising out of any act or omission or any negligence or carelessness on the part of the Subcontractor, its employees, sub-subcontractors or agents in relation to this Subcontract or the Subcontract Work hereunder. In addition to any liability or obligation of the Subcontractor to Sciamé (or, if the prime contract so provides, to Owner) relating to indemnification (whether pursuant to any other provision of this Subcontract or by statute or otherwise), the Subcontractor shall defend with counsel acceptable to Sciamé, indemnify and hold harmless Sciamé, Owner, such other persons or entities as Sciamé or Owner may identify in writing and their respective directors, officers, employees, agents, subsidiaries and affiliates



(each an "Indemnitee" and collectively the "Indemnitees") to the fullest extent permitted by law, from any and all liabilities, damages, expenses (including reasonable attorneys' and consultants' fees), disbursements and costs (including court costs) to which any or all of them may be subject by reason of any claim or suit alleging personal injury and/or property damage as described in the preceding sentence. This indemnification obligation encompasses (1) full indemnity in the event of liability imposed against the Indemnitees without negligence and solely by reason of statute, operation of law or otherwise; and (2) partial indemnity in the event of any actual negligence on the part of the Indemnitees either causing or contributing to the underlying claim, in which case indemnification will be limited to any liability imposed over and above that percentage attributable to actual fault whether by statute, by operation of law, or otherwise. Where partial indemnity is provided hereunder, costs, professional fees, attorneys' fees, expenses and disbursements shall be indemnified on a pro rata basis.

(b) In claims against any Indemnitee by an employee of the Subcontractor, a sub-subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under subparagraph (a) shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or a sub-subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

(c) The Subcontractor shall procure commercial general liability insurance coverage in accordance with the insurance requirements of this Subcontract to provide defense and indemnification to Sciamé, Owner and the other Indemnitees (who shall be designated as additional insureds under the pertinent policy or policies of insurance on a primary and non-contributory basis pursuant to Article 13) in the event of such claims or suits; provided, however, that the indemnification obligation under subparagraph (a) shall exist whether or not the Subcontractor has obtained and/or maintained such insurance coverage. In the event (1) that Subcontractor fails to obtain or maintain the required insurance and/or (2) that any insurance carrier(s) of the Subcontractor fails or refuses (whether due to late notice, purported exclusions from coverage or otherwise) to timely and completely assume, without reservation of rights, the defense and indemnification of Sciamé. Owner or any other Indemnitee, then the entirety or any portion of any monies due or to become due to the Subcontractor under this Subcontract or other security acceptable to the respective Indemnitee(s), as shall or may be considered necessary by the respective Indemnitee(s), may be retained by Sciamé (or, if the Prime Contract so provides, by Owner) until all such suits or claims shall have been conclusively resolved whether by settlement or other disposition, and evidence to that effect furnished to the reasonable satisfaction of the respective Indemnitee(s). Further, Sciamé shall be entitled to deduct the following from any monies due to the Subcontractor (or from any security put up by the Subcontractor): (i) all costs and expenses, including attorneys' fees, incurred in pursuing any claim against Subcontractor and/or Subcontractor's insurance carrier(s) for defense and/or indemnification; (ii) all deductibles required to be expended by reason of the circumstances described in (1) and/or (2) of this subparagraph; and (iii) any increase in insurance premiums actually incurred or reasonably likely to be incurred by reason of the circumstances described in (1) and/or (2) of this subparagraph.

(d) The Subcontractor shall defend, with counsel acceptable to Sciamé, and shall indemnify and hold harmless Sciamé, Owner and all other Indemnitees, to the fullest extent permitted by law, from any and all liabilities, damages and expenses to which any or all of them may be subjected by reason of any claim or suit for the alleged infringement of any copyright, trademark, trade dress, patent or any other proprietary right arising out of the use of any product, name, process, formula, invention, work or other tangible or intangible intellectual property of any kind furnished by the Subcontractor or any of its sub-subcontractors or suppliers in the performance of this Subcontract.

(e) For all purposes of this Article, attorneys' and consultants' fees, court costs, expenses and disbursements shall be deemed to include those fees, costs, expenses and disbursements incurred in defending any underlying claim and those fees, costs, expenses and disbursements incurred in connection with the enforcement of this indemnity obligation.

(f) The provisions of this Article shall survive expiration or any termination of this Subcontract.

*(Paragraphs deleted)*

**§ 4.7 SUPERSEDING ARTICLE 35-E OF GENERAL BUSINESS LAW OF STATE OF NEW YORK**

It is the intention of the parties that, to the extent not prohibited by Article 35-E of the General Business Law of the State of New York, commonly known as the "Prompt Payment Act" ("Prompt Payment Act"), or otherwise expressly provided in the Subcontract, the terms and conditions of the Subcontract shall supersede the provisions of the Prompt Payment Act in their entirety and accordingly, (i) the Prompt Payment Act shall not apply to the Subcontract and (ii)



the absence of a provision in the Subcontract covering any matter addressed in the Prompt Payment Act shall not be construed to mean that the parties have agreed that the applicable provision in the Prompt Payment Act shall govern with respect to that matter.

#### § 4.8 REMEDIES FOR NONPAYMENT

If the Contractor does not pay the Subcontractor through no fault of the Subcontractor undisputed sums properly due hereunder, within fourteen days from the time payment should be made as provided in this Agreement, the Subcontractor may, without prejudice to any other available remedies, upon fourteen additional days' written notice to the Contractor, stop the Work of this Subcontract until payment of such undisputed sums has been received.

#### ARTICLE 5 CHANGES IN THE WORK

§ 5.1 Contractor, without invalidating the Subcontract, may, at any time order or require changes in Subcontractor's Work consisting of additions, deletions or other revisions, with the Subcontract Price being adjusted accordingly ("Change Order"). If not otherwise provided for expressly in writing, the provisions of the Prime Contract with respect to pricing, approval and performance of Change Order work or additions, deletions and modifications to the Work shall be applicable to this Subcontract and fully binding upon the Subcontractor. Subcontractor will render bills for any additional work at such times and in such form and quantity as directed by Contractor. For the purpose of checking such bills and any other Claims and determining the correctness of the charges, Subcontractor shall permit Contractor to audit Subcontractor's books and hereby authorizes Contractor to check directly with the suppliers of labor and materials to confirm the accuracy and correctness of the charges for labor, materials or other items appearing in the Subcontractor's bill to Contractor. Any modification or change of the Subcontract providing for the omission of work shall be computed, and the value, when so determined, shall be deducted from the Subcontract Price as herein provided.

*(Paragraph deleted)*

§ 5.1.1 For changes in the Prime Contract that have been initiated by the Owner, the Subcontractor shall promptly submit any Claims it may have for the adjustment of price, schedule or other provisions of this Subcontract to the Contractor in writing, and at least ten (10) days before the Contractor must make such claim to Owner as required by the Prime Contract, to allow the Contractor to process such Claims with the Owner within the time and in the manner provided for in the Prime Contract. Contractor shall be liable to Subcontractor for such changes to the same extent, but only to the extent, that the Owner is liable and pays Contractor for the same insofar as it concerns Subcontractor's work. The mark-up for profit and overhead on all Change Order work ordered by the Owner and performed by the Subcontractor shall be as provided in the Prime Contract. However, if mark-up is not addressed, profit and overhead shall be equally divided between the Contractor and Subcontractor.

§ 5.1.2 The Subcontractor shall receive no extra compensation of any kind whatsoever, regardless of whether the same was ordered by Contractor or any of its representatives, unless such extra compensation is authorized by order given in writing and signed by the Project Manager of Contractor, or other duly authorized representative of Contractor, or Subcontractor has properly preserved its rights.

*(Paragraph deleted)*

§ 5.1.3 Prior to the issuance of any Change Order, Contractor may require Subcontractor to furnish a detailed itemization showing the difference in value of the work, labor, services, and materials changed by the proposed Change Order. If an agreement as to a monetary allowance or other term in the Change Order cannot be reached, Subcontractor, upon written direction from Contractor, shall perform the Work on a "time and materials" basis or otherwise to the extent, if any, that Contractor is so paid under the Prime Contract, under a reservation that the final adjustment in price shall be reserved until final completion of the Project. The monetary amount for the performance of any such Change Order work shall not exceed the allowances set forth in Subcontractor's prior detailed itemization.

§ 5.1.4 The failure of Subcontractor to immediately commence performance of any Change Order when so directed in writing by Contractor, regardless of whether agreement has been reached on the adjustment of the Subcontract Price, shall constitute a material breach of the Subcontract. Subcontractor may reserve its rights to extra compensation, if same has not been agreed upon at the time of Contractor's direction, by delivering to Contractor written notice of a Claim therefor, pursuant to this §5.1.4 prior to the commencement of any extra work.



§ 5.1.5 Any extension of time needed by Subcontractor as a result of a proposed alteration, addition or change in its Work shall be provided for in and by such Change Order. There shall be no other monetary or time allowance, direct or indirect, single or cumulative, to Subcontractor other than as specifically provided in such Change Order.

§ 5.1.6 Where unit prices are stipulated in the Subcontract, all adjustments, whether increases or decreases, shall be made in accordance with said units unless otherwise provided by the Prime Contract. Said units shall be deemed to include all general and administrative expenses, overhead, profit, supervision, extended performance cost factors, and all other direct and indirect expenses.

§ 5.1.7 The issuance of any Change Order and payment thereof, prior to completion and acceptance of the Project, shall not preclude Contractor from questioning the validity thereof and recouping payment therefor, if it is shown the Change Order work was in fact neither extra nor additional work under the terms of the Subcontract.

§ 5.1.8 No Change Order shall vary or affect the terms, conditions and provisions of the Subcontract unless specifically set forth in the Change Order.

§ 5.1.9 Unless otherwise agreed in writing signed by Contractor and Subcontractor, if a) Contractor directs Subcontractor to perform any changed work which is not payable to Contractor as extra work by the Owner, and b) Contractor directs Subcontractor to perform said work on a time and materials basis, such work will be payable as follows (unless the provisions of the Prime Contract dictate otherwise, in which event those provisions shall govern):

§ 5.1.9A Labor:

.1 WAGES: Direct field labor only up to and including the rank of working foreman;

.2 PAYROLL TAXES (if applicable): Actual cost. In determining actual costs, the statutory limitations for FICA, State Unemployment Insurance, and Federal Unemployment Insurance must be taken into account;

.3 UNION BENEFITS (if applicable): Actual cost per union agreements;

.4 INSURANCE: Actual net additional cost of insurance paid as a result of the extra work. In determining the actual cost of insurance, the Contractor will be given the benefit of premium discounts, experience modifications, etc. There will be no reimbursement for flat rate policies such as auto insurance, etc. In the event the Owner provides an Owner Controlled Insurance Plan ("OCIP") further information will be provided to Subcontractor.

§ 5.1.10 Equipment: Payment for equipment shall be limited to actual working time and limited to the value or rates of equipment used by the Subcontractor of suitable size and capacity required for the work to be performed. In the event the Subcontractor elects to use equipment of greater size, capacity, value or rental value, payment will be made at the rate applicable for suitable equipment.

§ 5.1.11 The rental rates for equipment shall be as follows:

.1 OWNED: Rental charged shall be as agreed upon between Contractor and Subcontractor but shall in no case exceed the monthly rates in the then-current edition of the Rental Rate Blue Book, as published by Equipment Watch, located at 1735 Technology Drive, San Jose, CA 95110 in use at the commencement of the extra work. Where a piece of equipment used by the Subcontractor is not listed in this publication, the rental rate shall be agreed upon by the Contractor and Subcontractor prior to its use on the work.

.2 LEASED: Invoice cost, provided the Contractor has approved the rates charged in advance.

§ 5.1.12 Material and installed equipment ("Material"): Actual net cost less salvage value. The Contractor will be given the benefit of trade discounts. Material charges must be substantiated by paid vendor's invoices and/or bills of sale.

§ 5.1.13 Overhead and profit: Ten Percent (10%) of Labor and Material for overhead and Five Percent (5%) for profit. If agreed to in writing, overhead and profit will be paid on the premium portion of overtime; however, overhead or



profit will not be paid on benefits relating to premium time. No overhead or profit will be added for owned or leased equipment. No additional overhead and profit will be paid for work performed by sub- subcontractors, unless otherwise required by the Federal Acquisition Regulations, in which case sub-subcontractor's overhead and profit shall not exceed 5%.

**§ 5.1.14 General:**

**§ 5.1.14A** The ten percent (10%) for overhead and five percent (5%) for profit includes, but is not limited to, home office general and administrative expenses, field supervision including superintendents, timekeeping, engineering, drafting, field office expense, small tools, general purpose equipment with an acquisition cost of less than \$500.00, and any other costs not specifically enumerated above.

**§ 5.1.14B** Subcontractor will deliver to the Contractor for Contractor's signature a daily time ticket showing the following:

- .1 Description: A complete description of the extra work and the Subcontract Work performed on that day.
- .2 Labor: Hours on the extra work by employee name and specific trade classification.
- .3 Equipment: Hours on the extra work by individual piece of equipment. This must include an adequate description including manufacturer, model number, capacity, etc.
- .4 Material: An adequate description showing the quantity and specific nature of each item of material furnished or installed as extra work or retrieved for salvage.

**§ 5.1.15** The daily time ticket must be delivered to Contractor not later than noon on the day following the day on which the extra work was performed. Failure to strictly adhere to this time requirement will result in denial of payment for this work.

**§ 5.1.16** All original invoices for extra work complete with the original signed daily time tickets, and material backup invoices from vendors, are to be sent to Contractor's main office, or to an address otherwise identified in writing by Contractor. An identical copy must be sent to Contractor's jobsite project office.

**§ 5.1.17** The Subcontractor shall make all claims promptly to the Contractor for additional cost, extensions of time and (if permissible) damages for delays or other causes in accordance with the Subcontract Documents. A claim which will affect or become part of a claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract. Such claims shall be received by the Contractor not less than two working days preceding the time by which the Contractor's claim must be made. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound.

**ARTICLE 6 MEDIATION AND BINDING DISPUTE RESOLUTION**

**§ 6.1** With respect to any Claim of Subcontractor of a type or character not addressed elsewhere in this Subcontract, or of Contractor against Subcontractor: a) the interpretation of this Subcontract, including any alleged breach hereof, shall be governed by the laws of the State of New York; b) any action at law or equity commenced by Subcontractor against Contractor or its sureties (unless otherwise provided in the surety's bond or by statute), or by Contractor against Subcontractor or its sureties (unless otherwise provided in the surety's bond or by statute), on Claims or causes of action arising under this Subcontract, shall be filed, and venue shall lay, exclusively in a court of general jurisdiction sitting within the State of New York and the County of New York; c) Subcontractor waives any claim for special, incidental, consequential or penal damages; d) the parties hereto hereby submit to the jurisdiction of said Court in all such matters; and, e) to the fullest extent permitted by law, the Parties hereto hereby waive the right to trial by jury. In any such action commenced by Subcontractor, it must, as a condition precedent to being granted any relief or remedy against Contractor or Contractor's sureties, plead and prove by way of documentation attached to its initial pleading or identified and incorporated therein:

.1 that with respect to each separate item of Claim or damage, it has complied with all the notice provisions of this Subcontract applicable to such item of Claim or damage;



.2 that it has in good faith attempted to negotiate a resolution of each separate item of Claim or damage; and

.3 that it has in good faith engaged in mediation in accordance with the Construction Industry Rules of the American Arbitration Association, and the mediator has declared in writing an impasse or it is otherwise demonstrable that the mediation has failed.

*(Paragraphs deleted)*

§ 6.2

*(Paragraphs deleted)*

Anything in § 6.1 notwithstanding, at the Contractor's sole option, any Claim by Subcontractor for which the dollar amount is equal to or less than \$200,000.00 (exclusive of interest and costs) shall be heard and determined before one (1) arbitrator in accordance with the Construction Industry Rules of the American Arbitration Association, and judgment upon the Award rendered thereon may be entered in any court of competent jurisdiction. The Arbitrator shall not have the power to apportion the costs and fees of the arbitration, which shall be borne as incurred; nor shall the Arbitrator have any power to award counsel fees or exemplary damages.

*(Paragraphs deleted)*

ARTICLE 7 SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

§ 7.1 SUSPENSION BY THE CONTRACTOR FOR CONVENIENCE

§ 7.1.1 The Contractor may, without cause, order the Subcontractor in writing to suspend, delay or interrupt the Work of this Subcontract in whole or in part for such period of time as the Contractor may determine. In the event of suspension ordered by the Contractor, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Time and Subcontract Sum.

§ 7.1.2 An adjustment shall be made for increases in the Subcontract Time and Subcontract Sum, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent that

- .1 performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Subcontractor is responsible; or
- .2 an equitable adjustment is made or denied under another provision of this Subcontract.

Init



§ 7.2 ASSIGNMENT OF THE SUBCONTRACT Subcontractor may not assign this Agreement without the express written consent of Contractor, which consent may be unreasonably withheld. Contractor may assign this Agreement without Subcontractor's consent. If any such assignment is made or given by Subcontractor, without prior written consent, the same shall be absolutely void and of no effect, and Contractor, in addition to any other rights under this Agreement, shall have the right, at its option, to terminate this Subcontract for default and shall thereafter be under no further obligations to Subcontractor. Without limiting the generality of the foregoing, Subcontractor acknowledges and agrees that Construction Manager shall have the right to assign the Subcontract to Owner or any party designated by Owner, and following any such assignment to Owner or such designee, then Owner or such designee, as the case may be, shall have the right to assign this Subcontract to any other party designated by Owner (each such assignee, a "Subcontract Assignee"), and upon and after any such assignment Subcontractor shall render full performance under the Subcontract to the Subcontract Assignee and the Subcontract Assignee shall succeed to all of Construction Manager's rights under the Subcontract and shall perform all of Construction Manager's obligations under the Subcontract arising from and after such assignment. Upon an assignment of the Subcontract to Owner, Subcontractor shall observe and comply with all instruments, requests, requirements, demands or other directives issued or made by the Owner's project manager on behalf of Owner in connection with the Work or the Subcontract, unless otherwise instructed by Owner. In the event the Subcontract Documents contain a provision pursuant to which the Subcontract is deemed terminated upon a termination of the Prime Contract, whether for convenience or upon default, or entitling Construction Manager to terminate the Subcontract upon any such termination of the Prime Contract, and the Prime Contract is terminated but Subcontractor receives a notice from Owner that an assignment of the Subcontract to Owner has been effectuated, whether before or after any such deemed or exercised termination of the Subcontract, then such deemed or exercised termination of the Subcontract shall be deemed null and void *ab initio*, and the Subcontract shall remain in full force and effect as so assigned.

(Paragraphs deleted)

#### ARTICLE 8 THE WORK OF THIS SUBCONTRACT

The Subcontractor shall execute the following portion of the Work described in the Subcontract Documents, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Subcontract Documents to be the responsibility of others.

(Paragraph deleted)

Refer to trade scope checklist, drawings, specifications and addenda.

#### ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 9.1 Subcontract Time is the period of time, including authorized adjustments, allotted in the Subcontract Documents for Substantial Completion of the Work described in the Subcontract Documents. The Subcontractor's date of commencement is the date from which the Subcontract Time of Section 9.3 is measured; it shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Contractor.

THE COMMENCEMENT DATE WILL BE FIXED IN A NOTICE TO PROCEED.

§ 9.2 Unless the date of commencement is established by a notice to proceed issued by the Contractor, or the Contractor has commenced visible Work at the site under the Prime Contract, the Subcontractor shall notify the Contractor in writing not less than five days before commencing the Subcontractor's Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 9.3 The Work of this Subcontract shall be substantially completed Per Schedule (exhibit L)

Portion of Work	Substantial Completion
Glazed Terracotta Rain Screen	10/05/15
Curtain Wall	07/07/16
Exterior Metal Panel	12/21/15
Fin Glass Assembl	02/07/16
Channel Glass	12/14/15

, subject to adjustments of this Subcontract Time as provided in the Subcontract Documents.



In the event the Subcontractor fails to achieve either Substantial Completion by the date or within the time specified, as the case may be, in the approved schedule, or any approved extension thereof, the Subcontractor shall pay Liquidated Damages in the amount of \$2,000 per day. Liquidated Damages will be assessed for each calendar day after such date or time until the Subcontractor achieves the respective Substantial Completion.

REFER TO RIDER "B" FOR TERMS OF LIQUIDATED DAMAGES

§ 9.4 With respect to the obligations of both the Contractor and the Subcontractor, time is of the essence of this Subcontract.

§ 9.5 No extension of time will be valid without the Contractor's written consent after claim made by the Subcontractor in accordance with Section 5.1.17.

ARTICLE 10 SUBCONTRACT SUM

§ 10.1 The Contractor shall pay the Subcontractor in current funds for performance of the Subcontract the Subcontract Sum of Thirty Two Million Five Hundred Thousand and Zero Cents (\$ 32,500,000.00 ), subject to additions and deductions as provided in the Subcontract Documents.

§ 10.2 The Subcontract Sum is based upon the following alternates, if any, which are described in the Subcontract Documents and have been accepted by the Owner and the Contractor:

See alternates in bid booklet  
CCIP - \$3,318,329.00  
P&P Bond - 1% - \$204,432.00

(Table deleted)

(Paragraphs deleted)

§ 10.4 Allowances included in the Subcontract Sum, if any:

(Paragraph deleted)

Item	Price
NONE LISTED	

ARTICLE 11 PROGRESS PAYMENTS

§ 11.1 Progress Payments shall be made to Subcontractor, pursuant to payment applications to be submitted by Subcontractor to Contractor, for the value of Subcontractor's Work completed during the prior month ("Payment Period") as estimated by Subcontractor and Contractor using the Schedule of Values, less 10% retainage to be withheld by Contractor until Final Payment is due and payable, conditioned, however, upon the Owner's approval and payment to Contractor for such Subcontractor's Work. Upon Subcontractor's achieving completion of 50% of its Work, as certified by the Architect, and upon written approval by the Owner, which may be withheld in Owner's sole discretion, the retainage may be reduced to 5%. Such progress payments by the Owner to the Contractor shall be a condition precedent to Subcontractor's entitlement to progress payments unless the Owner's failure to make payment is conclusively determined to be for reasons entirely unrelated to the quantity, quality or timeliness of Subcontractor's Work or its failure to satisfy obligations under this Subcontract. Accordingly, except only as may be provided to the contrary by statute not subject to waiver, Subcontractor hereby assumes the risk of Owner's nonpayment or delayed progress payments to Contractor for Subcontractor's Work, without recourse to the Contractor (but such shall not operate as a bar to Subcontractor's right to serve and file a Notice Under Mechanic's Lien Law). When the quantities approved by the Owner for payment consist of items of Work on which Subcontractor has performed only a portion of the Work approved for payment, then quantities of Work for which Subcontractor shall receive payment shall be determined by Contractor. Unless otherwise provided by law or the Prime Contract, payment to Subcontractor shall be made not later than thirty (30) days after Contractor receives payment from Owner. Notwithstanding, Contractor shall have the right to withhold any payment if, based upon reasonable evidence, it believes in good faith that Subcontractor cannot and will not complete its Work and that in such event the cost to Contractor to complete same will exceed the unexpended balance of the Subcontract Price and for such other reasons as set forth in Rider B.



§ 11.2 Upon the partial or entire disapproval by the Contractor of the Subcontractor's application for payment, the Contractor shall provide written notice to the Subcontractor. When the basis for the disapproval has been remedied, the Subcontractor shall be paid the amounts withheld.

#### § 11.3 SUBSTANTIAL COMPLETION

When the Subcontractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Prime Contract, the Contractor shall, upon application by the Subcontractor, make prompt application for payment for such Work. Within 30 days following issuance by the Architect of the certificate for payment covering such substantially completed Work, the Contractor shall, to the full extent allowed in the Prime Contract, make payment to the Subcontractor, deducting any portion of the funds for the Subcontractor's Work withheld in accordance with the certificate to cover costs of items to be completed or corrected by the Subcontractor. If the Prime Contract does not allow for a full release of retainage, then such payment shall be an amount which, when added to previous payments to the Subcontractor, will reduce the retainage on the Subcontractor's substantially completed Work to the same percentage of retainage as that on the Contractor's Work covered by the certificate.

*(Paragraphs deleted)*

#### ARTICLE 12 FINAL PAYMENT

§ 12.1 Final payment by Construction Manager to Subcontractor (including retainage being held under the Subcontract) shall not become due and payable until all of the following express conditions precedent have been satisfied in full: (a) the completion and acceptance of the Work by Construction Manager; (b) provision by Subcontractor of evidence satisfactory to Construction Manager that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, materials, equipment, taxes or other items performed, furnished, or incurred for or in connection with the Work; (c) complete and full satisfaction of all claims, demands and disputes, and all obligations and responsibilities of Subcontractor, arising out of or related to the Subcontract, including those as between Construction Manager and Subcontractor as well as those between Subcontractor and any third party; (d) the full performance by Subcontractor of all its obligations under the Subcontract (in addition to completion of the Work); (e) the receipt by Construction Manager from Subcontractor and each of its principal sub-subcontractors, of a Final affidavit and Release of Claims in such form as Construction Manager or Owner may prescribe; (f) the receipt by Construction Manager of all of Subcontractor's as-built drawings; (g) the receipt by Construction Manager of all guaranties and warranties required to be delivered by Subcontractor under the Subcontract and the other Contract Documents; (h) the receipt by Construction Manager of all certificates of completion and other certificates, permits, licenses, approvals and authorizations required by any governmental authority in connection with the Work; (i) the receipt by Construction Manager of any consents of Subcontractor's surety, if any, that may be required for final payment; and (j) the receipt by Construction Manager of satisfactory evidence that each event which had occurred by reason of which Construction Manager was withholding sums due to Subcontractor has been cured or no longer exists. The acceptance of final payment by Subcontractor shall constitute a full and final release of any and all Claims which Subcontractor has against Contractor except for Subcontractor's Claims which have been properly preserved and which are in dispute with the Owner and which have not been otherwise waived or resolved.

*(Paragraph deleted)*

#### ARTICLE 13 INSURANCE AND BONDS

§ 13.1 The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability as will protect the Subcontractor from claims that may arise out of, or result from, the Subcontractor's operations and completed operations under the Subcontract:

Type of insurance or bond

Limit of liability or bond amount (\$0.00)



Contractor to be enrolled in CCIP – See RFP Bid Booklet for limits.

§ 13.2 Coverages, written on an occurrence basis, shall be maintained without interruption from the date of commencement of the Subcontractor's Work until the date of final payment and termination of any coverage required to be maintained after final payment to the Subcontractor, and, with respect to the Subcontractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Prime Contract.

§ 13.3 Certificates of insurance acceptable to the Contractor shall be filed with the Contractor prior to commencement of the Subcontractor's Work. These certificates and the insurance policies required by this Article 13 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor. If any of the foregoing insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required in Article 12. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Subcontractor with reasonable promptness according to the Subcontractor's information and belief.

§ 13.4 The Subcontractor shall cause the commercial liability coverage required by the Subcontract Documents to include: (1) the Contractor, the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's operations; and (2) the Contractor as an additional insured for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's completed operations.

§ 13.5 The Contractor shall furnish to the Subcontractor satisfactory evidence of insurance required of the Contractor under the Prime Contract.

§ 13.6 The Contractor shall promptly, upon request of the Subcontractor, furnish a copy or permit a copy to be made of any bond covering payment of obligations arising under the Subcontract.

§ 13.7 Performance Bond and Payment Bond:

(Paragraph deleted)

Bond type	Bond amount (\$0.00)	Bond delivery date	Bond form
N/A	N/A	N/A	N/A

#### § 13.8 PROPERTY INSURANCE

§ 13.8.1 When requested in writing, the Contractor shall provide the Subcontractor with copies of the property and equipment policies in effect for the Project. The Contractor shall notify the Subcontractor if the required property insurance policies are not in effect.

§ 13.8.2 If the required property insurance is not in effect for the full value of the Subcontractor's Work, then the Subcontractor shall purchase insurance for the value of the Subcontractor's Work, and the Subcontractor shall be reimbursed for the cost of the insurance by an adjustment in the Subcontract Sum.

§ 13.8.3 Property insurance for the Subcontractor's materials and equipment required for the Subcontractor's Work, stored off site or in transit and not covered by the Project property insurance, shall be paid for through the application for payment process.

#### § 13.9 WAIVERS OF SUBROGATION

The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, separate contractors, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner. The Subcontractor shall require of the Subcontractor's Sub-subcontractors, agents and employees, by appropriate agreements, similar waivers in favor of the parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a



person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

#### ARTICLE 14 TEMPORARY FACILITIES AND WORKING CONDITIONS

§ 14.1 The Contractor shall furnish and make available at no cost to the Subcontractor the Contractor's temporary facilities, equipment and services, except as noted below:

Temporary Facility, Equipment or Service	Cost, if any (\$0.00)
REFER TO BID BOOKLET	

§ 14.2 Specific working conditions:

*(Paragraph deleted)*

All work of this contract to be in accordance with contract drawings and specs, Remedial Action Work Plan and the Project Labor Agreement.

#### ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Subcontract to a provision of another Subcontract Document, the reference refers to that provision as amended or supplemented by other provisions of the Subcontract Documents.

§ 15.2 Payments due and unpaid under this Subcontract shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Paragraph deleted)*

N/A

§ 15.3 Retainage and any reduction thereto are as follows:

See Section 11.1

*(Paragraph deleted)*

#### ARTICLE 16 ENUMERATION OF SUBCONTRACT DOCUMENTS

§ 16.1 The Subcontract Documents, except for Modifications issued after execution of this Subcontract, are enumerated in the sections below.

§ 16.1.1 This executed AIA Document A401-2007, Standard Form of Agreement Between Contractor and Subcontractor, as modified

§ 16.1.2 The Prime Contract, consisting of the Agreement between the Owner and Contractor dated as first entered above and the other Contract Documents enumerated in the Owner-Contractor Agreement. Subcontractor expressly acknowledges that it has had sufficient time to review the terms and conditions of the Prime Contract.

§ 16.1.3 The following Modifications to the Prime Contract, if any, issued subsequent to the execution of the Owner-Contractor Agreement but prior to the execution of this Agreement:

Modification	Date
N/A	

§ 16.1.4 Additional Documents, if any, forming part of the Subcontract Documents:

1. Bid Proposal Form, including:
  - a. Pricing Breakouts
  - b. Acknowledgement of all Addenda
  - c. Integrity Affidavit



- d. Trade Scope Checklist, dated 2/25/13
- e. Site Logistics Plans
- f. Drawings & Specifications List, dated 4/1/13
2. Bond Requirements
3. NY State Procurement Lobbying Act Forms
4. Bidder's Self-Performance Plan and Identification of Subcontractors
5. M/WBE and EEO Forms
6. Financial and Safety Qualification Forms
7. New York State Vendor Responsibility Forms
8. Vendor Disclosure Forms
9. Project Schedule
10. F.J. Sciamè Construction Co., Inc. General Requirements Rider 'A'
11. F.J. Sciamè Construction Co., Inc. General Requirements Rider 'B'
12. F.J. Sciamè Construction Co., Inc. General No Tolerance Policy
13. Subcontractor Safety Requirements
14. Project Labor Agreement
15. Project Insurance Requirements
16. Noise Mitigation Plan
17. FJSC Safety Program
18. CCIP Manual

*(Paragraph deleted)*

Notwithstanding any reference herein to AIA Document A201-2007 (General Conditions of the Contract for Construction), that document is not part of the Subcontract Documents.

This Agreement entered into as of the day and year first written above.

  
CONTRACTOR (Signature)

Michael Porcelli Executive Vice President

  
SUBCONTRACTOR (Signature)

Steven Cortic President  
(Printed name and title)

Init



**RIDER B TO AGREEMENT  
BETWEEN  
F.J. SCIAME  
AND  
WHITESTONE**



**RIDER B TO AGREEMENT**

**between**

**F.J. SCIAME CONSTRUCTION CO., INC. (“Contractor”)**

**and**

**WHITESTONE CONSTRUCTION CORP. (“Subcontractor”)**

Dated: October 7, 2013



15.21 Superseding Article 35-E of General Business Law of State of New York

15.21.1 It is the intention of the parties that, to the extent not prohibited by Article 35-E of the General Business Law of the State of New York, commonly known as the 'Prompt Payment Act' (the "Prompt Payment Act"), or otherwise expressly provided in this Agreement, the terms and conditions of this Agreement shall supersede the provisions of the Prompt Payment Act in their entirety and, accordingly, (i) the Prompt Payment Act shall not apply to this Agreement, and (ii) the absence of a provision in this Agreement covering any matter addressed in the Prompt Payment Act shall not be construed to mean that the parties have agreed that the applicable provision in the Prompt Payment Act shall govern with respect to that matter.

ARTICLE 16 - DISPUTES AND CLAIMS

16.1 Disputes between the Contractor and the Subcontractor

16.1.1 In consideration of and as a material inducement to the Construction Manager to enter into this Agreement, Subcontractor agrees that any Claim, as defined in Article 1, and any Dispute, as that term is defined in this Article 16, shall be determined in accordance with the provisions of Article 29 of the Prime Agreement and this Article 16. Subcontractor hereby agrees to submit to the dispute resolution procedures set forth therein and herein and that such procedures shall be the exclusive means for determining any Dispute, and consents to be joined in any mediation, arbitration or other alternative dispute resolution proceeding to which the Construction Manager or CUCF is a party concerning any such Dispute.

16.1.2. All claims, controversies or disputes Subcontractor may have in relation to this Agreement or the Work hereunder, including without limitation all claims, controversies or disputes a sub-subcontractor or a supplier to Subcontractor may have in relation to this Agreement, (each a "Dispute"), to the extent permitted by law, shall be resolved exclusively by the procedure set forth in this Article. Without limitation, this procedure covers Disputes concerning: (1) the scope of the Work related to this Agreement, (2) any direction given by CUCF or any governmental agency, (3) the performance by CUCF of its obligations under the Prime Agreement and/or by the Construction Manager of its obligations under this Agreement, (4) the interpretation of the Prime Agreement or of the Contract Documents, (5) if an amount, and what amount, if any, is to be paid for Work or Extra Work or disputed Work performed in connection with this Agreement, (6) every payment to and by Subcontractor, (7) the conformity of the Work with the Prime Agreement and this Agreement or the acceptability and quality of any portion or all of the Work, and (8) any combination of these. Independent of any other provision, time is of the essence to the procedures and to all time requirements set forth in this Article 16. Subcontractor hereby grants CUCF the right to resolve any claim, controversy, or dispute between or amongst CUCF, the Construction Manager and Subcontractor arising under or related to the Prime Agreement, this Agreement, or the Project, including, without limitation, the right of CUCF to resolve any of these by direct payment on behalf of Subcontractor to a sub-subcontractor or supplier to Subcontractor with a corresponding charge against Subcontractor's balance under this Agreement.

16.1.3. The terms of this Agreement shall remain in full force and effect during the period this dispute resolution procedure is being followed with respect to any Dispute. Subcontractor agrees to continue to perform its obligations hereunder during this period in accordance with this Agreement and as directed by the Construction Manager, including, without limitation, any and all matters covered by the Dispute. Failure of Subcontractor to continue without delay to discharge its obligations hereunder, including, without limitation, to perform any Work, disputed Work and Extra Work as directed, shall constitute a material breach of this Agreement and a waiver by Subcontractor of each Dispute then under review in this procedure. Notwithstanding the requirements of Section 16.1, the Subcontractor acknowledges that a breach of its obligations under this Section 16.1 may cause irreparable harm to the Construction Manager and that there may be no adequate remedy at law available to the Construction Manager by reason of such breach. Accordingly, the Construction Manager shall be entitled to mandatory injunctive relief to enforce Subcontractor's performance of its obligations hereunder.

16.1.4. During the investigations integral to this procedure, each party shall provide to the other party copies of all information that each provides in response to any requests for information made by the Executive Director of the Department of Design, Construction and Management of CUNY (the "Executive Director") and by



the Vice Chancellor for Facilities Planning, Construction and Management of CUNY (the "Vice Chancellor").

16.1.5. In any event Subcontractor, either on its own behalf or on behalf of a sub-subcontractor or supplier, fails (a) to submit timely any Notice of Dispute, Dispute Report, Notice of Appeal, or any other information or document required or requested to be provided or (b) to attend without good cause any meeting it is required or requested to attend, pursuant to this procedure, its Dispute shall be deemed waived, and CUCF and the Construction Manager shall be deemed released of all liability for it.

16.1.6. As either may deem appropriate from time to time, the Executive Director and Vice Chancellor each may obtain technical and other expertise for assistance in evaluating the information related to a Dispute. Each may use mediation and select as a neutral mediator a CUNY employee, who is from a department or office not under the supervision of the Executive Director or Vice Chancellor, or hire a neutral mediator, who is not employed by CUCF or CUNY; Subcontractor agrees to pay the Construction Manager a proportionate share of any fee required to be paid by the Construction Manager to CUCF for the services of a mediator not employed by CUCF or CUNY. All mediation sessions shall be confidential and the parties agree that no mediation session may be the sole source of any information used in any other forum, such as litigation of the Dispute.

#### 16.2 Commencement

Within ten (10) days of any act, omission or condition that gives rise to a Dispute, Subcontractor, both on its own behalf and on behalf of its sub-subcontractors and suppliers, must submit to the Construction Manager written notice of its Dispute. In each such notice, Subcontractor must identify (a) the date on which the Dispute arose, and (b) a brief description of it (with the elements specified in (a) and (b) hereof comprising a "Notice of Dispute"). Subcontractor may add other information it deems relevant. This notice requirement shall not replace any other notice requirement set forth in the Prime Agreement or in this Agreement. For cause, the Executive Director may extend in writing by no more than ten (10) business days the period within which Subcontractor may file the Notice of Dispute. The Construction Manager shall submit the Notice of Dispute to the Executive Director and may, in its sole discretion, elect to include or aggregate the Notice of Dispute, in whole or in part, with any dispute submitted by the Construction Manager to the Executive Director. An additional Dispute related in any fashion to an earlier Dispute that has been properly made must be initiated in full conformity with the requirements of this Section 16.2 and will be void unless submitted in such timely manner. The failure to provide written notice of a Dispute within the time provided for in this Section 16.2 shall render Subcontractor's claims with respect to such Dispute void and preclude any later assertion thereof by the Subcontractor or any sub-subcontractor or vendor.

16.2.1 In the event of circumstances arising out of the Work which requires the Construction Manager to perform an investigation related to the Work that may give rise to a Dispute, Claim or potential Claim, and upon request of the Construction Manager, the Subcontractor shall do the following:

- a. Provide full and immediate cooperation to the Construction Manager and its representatives who are charged with investigating the nature and circumstances of the claim or potential claim;
- b. Produce all documents and materials in its possession as requested by the Construction Manager or its representatives;
- c. Require all requested personnel (including those of sub-subcontractors) to provide their assistance with the investigation;
- d. Assist the Construction Manager, experts, attorneys and other representatives of the Construction Manager during the course of the Investigation;
- e. If requested, provide information pertaining to the investigation under oath;
- f. Furnish such other documents or information that may be relevant to the investigation;



g. Assist in the investigation of the Design Professional or any other party performing services or providing work, labor or material in connection with the Project or the Work; and

h. If requested by the Construction Manager, attend any arbitration, mediation or litigation action or proceeding in connection with the Project, without need for the issuance of a subpoena unless one is ordered by a dispute resolution board or court of law.

16.2.2 Under no circumstances shall any of the obligations set forth in this Article 16 affect the Subcontractor's duty to perform the Work in a professional manner. This Article 16 is solely intended to aid the Construction Manager in the investigation of Disputes, Claims or potential Claims arising out of the Work and to facilitate the expeditious resolution of such Claims or potential Claims in order to ensure that the Work is completed in accordance with the Contract Documents.

#### 16.3 Filing the Dispute

Within twenty (20) business days after submission of a Notice of Dispute to the Construction Manager, Subcontractor must submit to the Construction Manager an original and one copy (a) of a full written description of its Dispute, (b) of the resolution it requests, (c) of all documentation related to the Dispute, such as written orders from CUCF and the Construction Manager, and, as to any resolution that includes a payment of any sum, all supporting documentation that specifies the sum at issue and all computations required to arrive at the sum, and (d) of any other findings or decisions the Construction Manager asks CUCF and the Construction Manager to reach (with all of these elements comprising a "Dispute Report"). Subcontractor may add other information it deems relevant. For cause, the Executive Director and the Vice Chancellor may extend in writing by no more than ten (10) business days the period within which the Construction Manager may file the Dispute Report. The Construction Manager shall submit the Dispute Report to the Executive Director and may, in its sole discretion, elect to include or aggregate the Dispute Report, in whole or in part, with any dispute report submitted by the Construction Manager to the Executive Director.

#### 16.4 Investigation, Meetings, and Notice of Appeal

16.4.1. After receipt of the Dispute Report, the Executive Director shall investigate it, may require additional information from CUCF staff, from the Construction Manager and from Subcontractor, and may convene meetings with the Construction Manager and/or Subcontractor, including any relevant sub-subcontractor, and CUCF staff to resolve the Dispute. The Executive Director may resolve the Dispute by negotiating terms acceptable to the Construction Manager, Subcontractor and CUCF (a "Negotiated Resolution"). The Executive Director shall put in writing any Negotiated Resolution to be executed by the Construction Manager, Subcontractor and CUCF. Alternatively, after completing this investigation of the Dispute, the Executive Director may issue written findings and resolve the Dispute unilaterally, without negotiation, in a written decision (a "Unilateral Resolution") that CUCF shall send to the Construction Manager by certified mail, return receipt requested, and to the CUCF staff for implementation. The Construction Manager shall promptly furnish a copy of any Unilateral Determination to Subcontractor. Any Unilateral Resolution rendered by the Executive Director, and not timely appealed by Subcontractor pursuant to the procedure described below, shall be final and binding upon the parties, including Subcontractor and its sub-subcontractors and suppliers upon expiration of the tenth day after the Construction Manager receives any such Unilateral Resolution.

16.4.2. Subcontractor, on its own behalf and on behalf of a sub-subcontractor, may request that the Construction Manager submit an appeal if (a) the Executive Director is unable to reach a Negotiated Resolution or (b) Subcontractor receives a Unilateral Resolution with which Subcontractor disagrees. Subcontractor must commence any such appeal by submitting to the Construction Manager a written notice to be submitted to the Vice Chancellor requesting the Vice Chancellor to resolve the Dispute or to revise the Unilateral Resolution, as the case may be ("Notice of Appeal"). Subcontractor acknowledges that the Prime Agreement required the Construction Manager to file the Notice of Appeal within thirty (30) consecutive calendar days after the Executive Director receives the Dispute Report in the case of a failure to reach a Negotiated Resolution or, within ten (10) consecutive calendar days after the Construction Manager receives any Unilateral Resolution with which Subcontractor disagrees. Consequently, Subcontractor shall submit a Notice of Appeal pursuant to this paragraph to the Construction Manager in sufficient time to enable the Construction Manager to timely submit such Notice of Appeal



to the Vice Chancellor, but in no event less than three (3) business days before the deadline for the Construction Manager to submit the Notice of Appeal to the Vice Chancellor. The Construction Manager shall have no responsibility for failure to timely deliver a Notice of Appeal to the Vice Chancellor if Subcontractor shall fail to deliver same to the Construction Manager within the time required by this paragraph.

#### 16.5 Appeal

After submittal to the Vice Chancellor of the Notice of Appeal, the Vice Chancellor shall investigate the Dispute, may require additional information from CUCF staff, from the Construction Manager and from Subcontractor, and may convene meetings with the Construction Manager and Subcontractor, including any relevant sub-subcontractor, and CUCF staff to resolve the Dispute. The Vice Chancellor may resolve the Dispute by negotiating terms acceptable to the Construction Manager, Subcontractor and CUCF. The Vice Chancellor shall put in writing any such resolution to be executed by the Construction Manager and the CUCF. Alternatively, after completing this investigation of the Dispute, the Vice Chancellor may issue written findings and resolve the Dispute unilaterally, without negotiation, in a written final decision that CUCF shall provide to the Construction Manager and to the Executive Director for implementation, a copy of which shall be promptly furnished by the Construction Manager to Subcontractor. If the Vice Chancellor is unable to resolve the Dispute within thirty (30) consecutive calendar days of receiving the Notice of Appeal or if within ten (10) consecutive calendar days after the Construction Manager receives from the Vice Chancellor a written final decision with which the Construction Manager disagrees, Subcontractor, on its own behalf and on behalf of its sub-subcontractors, agrees that its only remedy shall be an appeal pursuant to Article 78 of the Civil Practice Laws and Rules of the State of New York.

#### 16.6 Claims and Actions Thereon

16.6.1 No claim by Subcontractor against Construction Manager, or, to the extent expressly permitted by the Prime Agreement, against CUCF for damages for breach of contract or compensation for Extra Work shall be made or asserted in any action or proceeding at law or in equity, unless Subcontractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims as provided in this Agreement. The failure of Subcontractor to timely and strictly comply with the requirements of this Article 16, or any of the related requirements of the Prime Agreement, shall be conclusively deemed to be a waiver by Subcontractor of, and will relieve contractor of all responsibility to present or pay for, any such Claim or dispute.

16.6.2 No action or proceeding shall be instituted or maintained by Subcontractor on any claims unless such action or proceeding be commenced within six (6) months after the date of the filing of the final payment voucher pursuant to the Prime Agreement; except that an action or proceeding on a claim for moneys deducted, retained or withheld under the provisions of this Agreement or by law, must be commenced within six (6) months after the date of final payment hereunder or after such moneys become due and payable hereunder, whichever is later, and, further, except that an action or proceeding on a claim based upon the Director's or Construction Manager's exercise of the right to terminate this Agreement for cause must be commenced within six (6) months after the date on which this Agreement is so terminated for cause.

16.7 No claim whatsoever shall be made by Subcontractor against any officer, agent, or employee of the Construction Manager or CUCF for, or on account of, anything done or omitted to be done in connection with this Agreement. Subcontractor further agrees that it shall make no claim against CUCF, its officers, agents or employees, by reason of this Agreement, or any acts or omissions of the Construction Manager; provided however, such restrictions shall not apply to (a) demands filed by Subcontractor pursuant to Article 10.6 of the Prime Agreement, or (b) disputes submitted by Subcontractor pursuant to dispute resolution provisions contained in this Agreement.



# **SECTION 01 33 00**

## **SUBMITTALS**



## SECTION 01 33 00

### SUBMITTAL PROCEDURES

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#### PART 1 - GENERAL

##### 1.01 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and other Division 01 Specification Sections, apply to this Section.

##### 1.02 SUMMARY

- A. This Section specifies administrative and procedural requirements for handling and processing submittals during construction.
- B. Related Sections include the following:
  - 1. Instructions to Bidders
  - 2. 01 77 19 Contract Closeout

##### 1.03 SUBMITTAL SCHEDULE

- A. The Contractor shall submit a list of submittals and schedule of dates for submission as stipulated in the Contract Documents and as required for the execution of the work.
- B. The Contractor shall submit a Submittal Schedule in hard copy and electronically, with submission numbers clearly noted. The CM will review proposed schedules for acceptance and submit any revisions necessary. Time frames are to be given in consecutive calendar days, not number of working days. Such schedules shall be submitted at the Project Pre-Construction conference.
- C. The following guidelines shall apply:
  - 1. Type 1 Submissions: Long lead items, preparatory work items and other items as required within the Contract Documents, shall be submitted within ten (10) calendar days after Notice to Proceed or as required by Contract.
    - a. Surveys
    - b. Storage area location(s)
    - c. Project schedules, procedures, and phasing plan
    - d. Security plan
    - e. Site Safety Plan
    - f. Waste management/removal plan
    - g. Preliminary coordination drawings
  - 2. Type 2 Submissions: All technical and product data, shop drawings, samples, on-going submittals such as monthly progress reports, progress photographs, and submission items which are not required for the work to start, will be submitted according to the approved submittal schedule. If no time frame is given they may be submitted up to thirty (30) calendar days after the date of the Notice to Proceed.
  - 3. Type 3 Submissions: Items such as guarantees, warranties, as-built drawings, reports, installation certificates, operation or maintenance manuals, quality control testing, lab reports, and permits (including all Agency approvals, sign-offs, and DOB Letters of Completion) will be accepted beyond thirty (30)

calendar days after date of the Notice To Proceed, but no later than the approved project date of final completion, or as mandated by time frames set by any Agency having jurisdiction over the project.

- D. The submission schedules shall indicate dates when each item will be sent by the Contractor to the CM for review and approval by CM/AE.
- E. The Contractor shall be responsible for strict adherence to approved schedules unless a written request for deviation from the schedule is made to the CM. The request shall not be valid until approved.
- F. Submit all shop drawings, samples and product data from each specification section at the same time, unless otherwise noted in the approved Submissions schedule.
- G. No work shall be fabricated, or materials delivered to the site, until final approval of all shop drawing(s) and other required submissions for that work has been obtained
- H. Final payment to the Contractor will not be released until all approved submissions of all phases are received, checked and approved.
- I. Submissions returned for corrections shall be resubmitted with the required corrections made within ten (10) business days, calculated from the date of receipt of the returned submission(s) from the Contractor. The procedure shall be repeated as many times as required, until final submissions are obtained that require no further correction.
- I. Rejected submissions shall be resubmitted with the required corrections made within ten (10) business days, calculated from the date of receipt of the returned submission(s) from the Contractor. The procedure shall be repeated as many times as required until final submissions are obtained that require no further correction.

#### 1.04 LOCATIONS

- A. All Submissions, except product samples, shall be made by electronic mail to the Construction Manager at an e-mail address provided by the CM. The CM will review for general submittal completeness and transmit same to the project Architect.
- B. Product samples are to be delivered to the CM as follows:  
F.J. Sciamè Construction Co., Inc.  
14 Wall Street, 2<sup>nd</sup> Floor  
New York, NY 10005  
Attn: Melissa Steeves

#### 1.05 DISTRIBUTION OF PRODUCT DATA, SAMPLES AND SHOP DRAWINGS

- A. Contractor Submissions
  - 1. The Contractor shall submit product data and test data by electronic mail; O&M manuals and shop drawings shall be submitted as hard copies. All submissions shall be directed to the CM Project Manager.
  - 2. Samples: a total of three (3) samples shall be provided to the CM

#### 1.06 SUBMISSION REQUIREMENTS, GENERAL

- A. All Contractor submissions shall be accompanied with a dated transmittal letter, indicating the contract number, Facility name, and the applicable specifications section number. Submittals not accompanied by a clear transmittal will not be accepted.



- B. The Contractor shall be responsible for the pickup of all unacceptable or rejected submissions.
- C. The Contractor shall check all submittals for accuracy, completeness, dimensions, clearances, connections, accessibility, servicing, maintenance, and compliance with the Contract Documents, including changes by addenda, change orders, and coordination drawings of related trades. In addition, the Contractor shall verify all field measurements and conditions. Submissions shall bear Contractor's stamp of approval as evidence that they have been so reviewed. The Contractor shall then transmit the submission(s) for review. Submissions that do not fully comply with these requirements will not be accepted.
- D. The shop drawing(s) shall show in detail all components, finishes, fabrication and construction methods, relationship to adjoining work on shop drawing(s), sizes, dimensions, sections, gauges, connections and anchors. Include on each sheet information as to vendor's name, drawing(s) number, date drawn, revision number and revision date. Contract Drawings submitted as shop drawings WILL NOT BE ACCEPTED
- E. Shop drawings, product data etc. shall be submitted electronically. Clearly indicate proposed items when there are multiple choices on a cut sheet.
- F. Acceptance of a separate item shall not be interpreted as acceptance of an assembly in which the item functions. The right is reserved by the CM to require submissions of details, shop erection, coordination or setting drawings, and of any schedules for any part of the work, whether or not specifically mentioned in Specification Sections, where substitutions or modifications are proposed by the Contractor or where such information is essential to the proper assembly, coordination or execution of the work under the Contract.
- G. The items listed in the Contractor's submissions list do not limit the Contractor's responsibility from submitting Shop Drawings, Product Data or Samples for all equipment, accessories and operations that are to be provided under this contract. There will be no adjustment to the contract price to compensate the Contractor for submissions requested which are not specifically listed.
- H. Except as otherwise specifically provided in the Contract Documents, CUNY reserves the right to reject any materials, equipment or articles proposed for use by the Contractor with which CUNY has had no prior experience, unless the Contractor is able to prove to the satisfaction of CUNY that such materials, equipment or articles have been in general use and given satisfactory performance for a minimum of three years. The Contractor shall furnish the CM with a list of such locations, and the CM and CUNY shall conduct such investigation as will, in its sole judgment, satisfy itself as to the fitness of the materials, equipment or articles for the work intended.
- I. All substitutions requested by the Contractor shall be supported by comparison sheets for both the specified item and the proposed substitution, showing all necessary equivalent information for both. Submissions including only information on the proposed substitution will not be accepted.
- J. All shop drawings shall be printed to scale, and the scale identified in the title block of the drawing.
- K. All items of related equipment in a system shall be the product of one manufacturer, and shall be submitted together at one time, unless otherwise noted in the schedule.

The submissions for a system shall consist of original catalog cuts accompanied by an enclosed table of contents. This table of contents shall contain a list of all equipment proposed to be used, giving the manufacturer's name, trade name, catalog number or other positive means of identification for each item.

- L. For those items required to comply with referenced standards, certifications from the manufacturer of such compliance shall be submitted. Corresponding equipment in each system shall be the product of one manufacturer. The term "w/certification" also refers to the submittal of any and all certified mill or laboratory test reports indicating that the material submitted complies with the requirements specified and is intended generally for the applications shown.
- M. The term "w/color chart" refers to the submittal of a manufacturer's full assortment of colors available for the specified product. Submittals shall be in color. Black and white copies are not acceptable.
- N. Where physical samples are required, three (3) samples shall be submitted for each item.
- O. Deviations from the Contract Documents shall be clearly marked, indicating component and system variations, additions, deletions, revised equipment locations, construction detail variations, substitutions, and similar changes. Include a written description of the reason for the deviation, indicating headroom heights, ceiling heights, clearances, and other dimensions affected by the proposed deviations. All variations from the Contract Documents not brought to the attention of the CM in this manner shall be the sole responsibility of the Contractor even when such submittal has been accepted.
- P. The Contractor's Responsibility: The CM/AE review and acceptance shall not relieve the Contractor from responsibility for error in shop drawings or for proper coordination and assembly of materials and equipment with other work; nor from the responsibility of furnishing materials and labor not indicated on the shop drawings, but required by the Contract Documents for completion of the Work.
- Q. Equivalent Quality of Materials: All materials and equipment which are designated in the Specifications by a number in the trade name are designated for the purpose of describing the article and fixing the standard of the quality and finish. Materials and equipment which are, in the opinion of the CM/AE, the equivalent to that specified, will be accepted.
- R. No work shall be fabricated, or materials delivered to the site, until final approval of all shop drawing(s) and other required submissions for that work has been obtained. Final approved copies of all shop drawing(s) must be completed without added corrections, notes or comments, in pencil or ink on the white prints or blueprints. At the time of submission, the Contractor shall call to the attention of the CM, in writing, to any deviations from the Contract Documents contained on the Shop Drawing(s). The approval of the Drawing(s) containing deviations not specifically brought to the attention of CUNY, or containing errors or omissions of any sort, shall not relieve the Contractor of the responsibility for executing the work in accordance with the Contract Documents.
- S. Final payment to the Contractor will not be released until all approved submissions of all phases are received, checked, and approved.



- T. In submittals requiring manufacturer's literature, provide complete installation instructions for specified product and any associated miscellaneous material required to complete construction.
- U. The submission of any material, or article, as the equal of the materials or articles set forth in the specifications as a standard shall be accompanied by cost information, illustrations, drawings, descriptions, catalogs, records of tests, samples and any other information for both the specified item and the potential substitute item essential for judging, the quality and the materials, finish and durability of that specified as standard, as well as information indicating satisfactory use under similar operating conditions.
- V. Identify each submission by the Submission Control Number assigned on the Submission List. The control number shall be clearly written on the upper right hand corner of each catalog cut, incorporated into the title block of all shop drawings, included on all transmittals, and on identifying labels affixed to all samples. Items not submitted in this format will be rejected without review.
- W. In the event that all or any portion of a submission is rejected due to nonconformance with packaging and labeling requirements, or for any other reason, the Contractor shall tender a new submission conforming to contract requirements within (10) ten consecutive calendar days, calculated from the submission's rejection date. In no event shall the Contractor be permitted to tender submissions beyond the dates contained in the approved Submissions schedule without written approval of the CM.
- X. Disapproved submissions are to be returned to the Contractor directly.
- Y. No work shall be fabricated, manufactured, or installed from shop drawings stamped "Revise and Resubmit" or "Rejected", and such shop drawings shall be corrected and resubmitted by the Contractor until accepted by the Architect. At least one complete set of "No Exceptions Taken" and/or "Make Corrections Noted" shop drawings shall be kept at the site in the Contractors field office for reference at all times. "Revise and Resubmit" or "Rejected" shop drawings shall not be permitted at the site.
- Z. Submittals marked "No Exceptions Taken": submittals which require no corrections by the Architect will be marked "No Exceptions Taken".
- AA. Submittals marked "Make Corrections Noted": submittals which require only a minor of amount of correcting will be marked "Make Corrections Noted". This mark shall mean that checking is complete and all corrections are obvious without ambiguity. Fabrication will be allowed on work marked "Make Corrections Noted" provided such action will expedite construction and noted corrections is adhered to. If fabrication is not made strictly in accordance with corrections noted, the item shall be rejected in the field, and the Contractor will be required to replace such work in accordance with corrected submittals and at their own expense.
- BB. Submittals marked "Revise and Resubmit" or "Rejected": when submittals are contrary to contract requirements or too many corrections are required, they will be marked "Revise and Resubmit" or "Rejected". No work shall be fabricated under either of these marks. The Architect shall list the reasons for rejection on the submittals or in the transmittal letter accompanying their return. The submittals must be corrected and resubmitted for approval within ten (10) business days.

#### 1.07 SUBMISSION REQUIREMENTS, GENERAL

##### A. General:

1. Where required in the Specifications or otherwise requested by the CUNY, CM or Architect, samples of any material to be used, and of the finish to be applied in the Work, shall be submitted to the Contractor for approval. Samples shall be of such a nature to fully illustrate the character of the finished work or as may be more fully described in the trade Specifications.
2. Samples shall be furnished so as not to delay fabrication, allowing the Architect and CM reasonable time for the consideration of the samples submitted.
3. The Contractor shall store and protect large samples and mock-ups until the Project is complete or until a time approved by the CM.
4. Accepted samples will establish the standards by which the completed Work will be judged.

B. Samples:

1. Samples shall be of sufficient size or quantity to clearly illustrate the quality, type, range of color, finishes or texture and shall be properly identified.
2. Samples shall be checked by the Contractor for conformance to the Contract Documents before being submitted to the Architect and the CM and shall bear the Contractor's stamp of approval certifying that they have been checked.
3. Samples shall be submitted in triplicate and each sample shall be identified with the name and number of the Project, reference to Specification Section, Contract Drawing number, nature of the material, trade name of manufacturer and the location of its intended placement. Written approval shall be obtained, and the work furnished shall conform strictly to the samples approved by the CM. No approval of a sample shall be taken in itself to change or modify any of the requirements of the Contract.
4. Transportation charges on samples submitted to the CM shall be prepaid by the Contractor. Samples shall be delivered to the CM's office at 14 Wall Street, NY, NY 10005, Attention: Anne Marie Chance. If the Contractor requires a sample for his use, he shall notify the CM in writing.
5. If samples are disapproved, the Contractor shall make all corrections required and shall resubmit the required number of new samples until approval is received.

C. Job Mock-Ups:

1. Job mock-ups (as required) by the CM or CUNY representative shall be constructed on site by the Contractor and only one of each type will be required. Mock-ups shall be constructed only after the individual samples and components used in the mock-up have been approved by the Architect. If a mock-up is not approved, the Contractor shall construct additional ones until approval is received.

D. Samples for Tests:

1. The Contractor shall furnish such samples of material as may be required for examination and tests. All samples of material for tests shall be taken according to standard methods and as required by the Contract Drawings.

E. Samples Of Materials: The Contractor shall submit to the Construction Manager for approval, samples of all materials, in accordance with the specification requirements, as directed by the CM.

1. For samples of materials involving electrical work of any nature, see the "General Electrical Requirements".
2. Samples shall be in triplicate, of sufficient size to show the quality, type, range of color, finish and texture of the material. However, in addition thereto, after approval, three (3) additional samples showing the material, color and texture of



- all interior finishes, including the finishes of exposed built-in equipment, trim, glazing, fittings and fixtures, etc., shall also be furnished. The sizes of these additional samples shall be as directed and acceptable to the CM.
3. Each of the samples shall be labeled, bearing the name and quality of the material, the Contractor's name, date, Contract and Project, and the related Specification or Drawing reference to the samples submitted.
  4. A letter of transmittal, in triplicate, from the Contractor requesting approval, must accompany all such samples.
  5. Transportation charges to the Construction Manager's office must be prepaid on all samples forwarded.
  6. Samples for testing purposes shall be in accordance with the requirements of the Specifications.
- F. Samples On Display: When samples are specified to be equal to samples in the office of the CM, they shall be carefully examined by the bidders and by those whom the bidder expects to employ for the furnishing of such materials.
- G. The Approval Of Any Samples: Will be given as promptly as possible, and shall be only for the characteristic, color, texture, strength, or other feature of the material named in such approval, and no other. When this approval is issued by the CM, it is done with the distinct understanding that the materials to be furnished will fully and completely comply with the Specifications, the determination of which may be made at some later date by a laboratory test or by other procedure. Use of materials will be permitted only so long as the quality remains equal to the approved samples and complies in every respect with the Specifications and the colors and textures of the samples on file in the office of the CM for the Project.
- H. The Architect will be the final judge as to acceptability of laboratory test data and performance in service of materials submitted.
- I. Valuable Samples: such as hardware, plumbing and electrical fixtures, etc., not destroyed by inspection or test, will be returned to the Contractor and may be incorporated into the Work after all questions of acceptability have been settled, providing suitable permanent records are made as to location of the samples, their properties, etc.
- J. Equivalent Quality Of Materials: All materials and equipment, which are designated in the Specifications by a number in the catalog of any manufacturer or by a manufacturer's grade or trade name, are designated for the purpose of describing the article and fixing the standard or the quality and finish. Materials and equipment, which are, in the opinion of the Architect, the equivalent to that specified, will be acceptable.
- K. Equals: The submission of any material or article as the equal of the materials or articles set forth in the Specifications as a standard, shall be accompanied by illustrations, drawings, descriptions, catalogs, records of tests, samples and any and all other information essential for judging the equality to the materials, finish and durability of that specified as standard, as well as information indicating satisfactory use under similar operating conditions.
- L. Where the Specifications provide that the manufacturer's directions are to be used, such printed directions shall be submitted to the Construction Manager.
- M. Construction Manager To Select Inspectors: Except as specifically provided in the Specifications, the Construction Manager and Architect will select and designate all

persons, firms, or corporations to make or witness each and every inspection, test or analysis, with or without reports. See also Technical Specifications for certain certifications and inspections; in all cases, the Technical Specifications supersede the General Conditions.

- N. The Contractor shall give notice in writing to the Construction Manager, sufficiently in advance of his intention to commence the manufacture or preparation of materials specially manufactured or prepared for use in or as part of the permanent construction.
- O. Such notice shall contain a request for inspection, the date of commencement and the expected date of completion of the manufacture or preparation of materials. Upon receipt of such notice, the CM will arrange to have a representative present at such times during the manufacture as may be necessary to inspect the materials, or he will notify the Contractor that the inspection will be made at a point other than the point of manufacture, or he will notify the Contractor that inspection will be waived.
- P. No Shipping Before Inspection: The Contractor shall comply with the foregoing, before shipping any material.
- Q. Certificate Of Manufacture: When the CM so requires, the Contractor shall furnish to him, authoritative evidence in the form of Certificates of Manufacture that the materials to be used in the Work have been manufactured and tested in conformity with the Specifications. These certificates shall include copies of the results of physical tests and chemical analysis where necessary, that have been made directly on the product or on similar products being fabricated by the manufacturer.
- R. When materials or manufactured products shall comprise such quantity that it is not practical to make physical tests or chemical analysis directly on the product furnished, a certificate stating the results of such tests or analysis of similar materials which were concurrently produced may, at the discretion of the Construction Manager, be considered as the basis for the acceptance of such material or manufactured product.

#### 1.08 SAMPLE SUBMISSION SCHEDULES

<p><b>SUBMISSIONS LIST</b></p> <p><b>Project Name:</b></p> <p><b>Contractor Name:</b></p> <p><b>Address:</b></p> <p><b>Phone:</b></p> <p><b>Fax:</b></p>					
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CSI Section	Control No.	Item Description	Per Spec	Substitute	Submission Phase (I, II, or III)




PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION (NOT USED)

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END OF SECTION 01 33 00